IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1041 OF 2002

Indian Oil Corporation Limited ..Petitioner.

Vs.

State of Maharashtra & Ors. ..Respondents.

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Mr. Shyam Diwan with Mr. Santosh Pawar i/b M/s. Bhave & Co. for the petitioner.

Mr. R.J. Mane, AGP for the State.

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CORAM : DR.D.Y.CHANDRACHUD, J.

14th January, 2005.

ORAL JUDGMENT :

1. Indian Oil Corporation has moved these proceedings under Article 226 of the Constitution in order to challenge a communication dated 14th March, 2002 of the Collector, Mumbai Suburban District. By the impugned decision the Collector has demanded an amount of Rs.60,44,227/- towards lease renewals for the periods 1974-81,

1981-88 and 1988-95. An amount of Rs.2.86 Crores has in addition been demanded as being payable for the period between 1995 to 2002. After giving credit for the amounts which have already been paid, the total demand that has been raised upon the Petitioner is in the amount of Rs.2,71,78,575/-.

2. On 16th May, 1964, the Additional Collector of the Mumbai Suburban District allotted land admeasuring 1382 sq. yds. out of Survey No.60-A to the Petitioner for the purpose of establishing and operating a petrol pump for a period of seven years. The rent was then fixed at 5% of the full market value which was to be communicated to the Petitioner subsequently. The letter of allotment provided that the land shall be used for the purpose for which it is granted and for no other purpose. On 22nd June, 1964, the Petitioner was informed that the rent payable at the rate of 5% of the full market value of Rs.35/- per sq. yd. was Rs.2501.40 per annum. On 25th October, 1968, the Additional Collector extended the lease for a further period of 30 years subject to the same terms and conditions.

However, there was a stipulation that the lease rent would be revised after each term of seven years. The term of the lease, it is common ground, expired on 31st July, 1996.

3. On 24th July, 2001 the Collector addressed a communication to the Petitioner intimating that a Government Resolution had been issued on 5th October, 1999 in regard to the renewal of such leases. The communication spelt out that under the terms of the Resolution, Government had decided that in view of the fact that lands which had been leased out in Greater Mumbai were held on restricted tenure, the leases which had expired would be renewed until 31st December, 1998. The market value for determining the lease rent would be taken as of the date of the expiry of the lease and for commercial users, the lease rent would be calculated at the rate of 2.5% of the said market value. Moreover, with effect from 1st January, 1999 the leases would be renewed for a period of 30 years, the lease rent being fixed at 2.5% of the market value as on 1st January, 1999. The Collector would determine the amount payable by the lessee on these

principles under the Maharashtra Land Revenue Code, 1966 and the Regulations of 1971 framed thereunder. The Petitioner was called for a hearing before the Collector in response to this communication.

4. On 19th October, 2001, the Collector addressed a further communication to the Petitioner. The Collector's communication adverts to a decision taken by the Government on 1st July, 1996 against which the Petitioner had filed a revision under Section 247 of the Maharashtra Land Revenue Code, 1966 and to a decision dated 30th March, 1998 of the Additional Commissioner, Konkan Division, in pursuance of which the Petitioner deposited an amount of Rs.43,07,201/-. In the meantime, it was stated that though there had been no renewal of the lease after 31st July, 1996, the Tahsildar had by his notice dated 1st June, 1999 demanded a total amount of Rs.52,25,692/- as arrears for the period 1996-97 to 1998-99 at a yearly rent of Rs.17,41,480/-. This demand notice was recalled by the aforesaid communication dated 19th October, 2001 and a fresh decision to renew the lease for a period of thirty years was

communicated to the Petitioner in terms of the Government Resolution dated 5th October, 1999. The Collector stated that the valuation of the land was to be finally determined by the Town Planning and Valuation Department and would take some time. In the meantime, by an ad hoc determination, the Collector fixed the land value as on 1st August, 1996 at Rs.24,900/- per. sq. mtr. and on 1st January, 1999, at the rate of Rs.43,000/- per sq. mtr. On this basis a demand at the rate of 2.5% was made upon the Petitioner consistent with the Government Resolution dated 5th October, 1999. An amount of Rs.7,23,276/- was fixed as the yearly premium from 1st August, 1996 to 31st December, 1998 and Rs.12,45,751/- as the yearly premium on and from 1st January, 1999. A total demand of lease rent in the amount of Rs.62,12,341/- was raised upon the Petitioner. The Petitioner was informed that in the event that the valuation of the land fixed by the Town Planning Department was at a higher rate than what had been determined by the Collector, the Petitioner would be called upon to pay the difference. The letter of the Collector was followed by a demand notice dated 8th November, 2001 in the amount

of Rs.77.65 lacs inclusive of a penalty of Rs.15.53 lacs. (The State Government in its affidavit in reply in these proceedings has now clarified that the penalty was demanded under a mistake and had not been authorized.) The Petitioner, it would appear, had informed the Government that the amount which was liable to be paid had to be reduced pro rata since a part of the land had been acquired by the Municipal Corporation for the purpose of road widening. On 9th November, 2001 the Collector called upon the Petitioner to deposit an amount of Rs.31,06,170/- being 50% of the total amount due and payable and it was stated that the balance could be paid after the area that was acquired by the Municipal Corporation for road widening was determined. Accordingly, on 23rd November, 2001 the aforesaid amount was paid by the Petitioner.

5. The Petitioner is now aggrieved by a subsequent communication of the Collector dated 14th March, 2002. In the aforesaid communication, the Collector has recorded that of the total land admeasuring 1154.2 sq. mtrs. that was leased out to the

Petitioner, land admeasuring 261.6 sq. mtrs has been acquired for the purposes of road widening upon which the balance land in the possession of the Petitioner admeasures 892.6 sq. mtrs. On this aspect of the matter, there is no controversy or dispute. The Collector in his communication has, however, informed the Petitioner that for the periods between 1974 to 1981, 1981 to 1988, 1988 to 1995 and from 1995 until 31st July, 1996, the lease rent had been recovered from the Petitioner on a provisional basis. Accordingly, a final determination of the lease rent was required to be made on the basis of the valuation of the land as on 1st July, 1974, 1st July, 1981, 1st July, 1988 and 1st July, 1995. The Assistant Director of the Town Planning, it is noted, submitted his report dated 6th November, 2001 in pursuance where of the following demand has been raised on the Petitioner :

Area sq.mtr	*Period of Lease*	*Rate p.sq.mtr. Determined by the Asst. Director of Town Planning*	*Lease rent*	*Annual Lease Rent Payable*	*Total Lease Rent Payable*
892.6	July,74 to June,81	Rs. 300/-	6.1/2%	Rs.17,591/-	Rs.1,23,137/-
	July,81 to June,88	Rs.2,500/-	8.00%	Rs.1,90,859/-	Rs.13,36,013/-
	July,88 to June,95	Rs.9,000/-	8.00%	Rs.6,55,011/-	Rs.45,85,077/-
	July,95 to June,02	Rs.30,000/-	15.00%	Rs.40,86,109/-	Rs.2,86,02,763/-
				Total	Rs.3,46,46,990/-

6. After giving to the Petitioner credit for an amount of Rs.74,68,415/- that has been already deposited, a total amount of Rs.2,71,78,575/- has been demanded from the Petitioner. This demand is sought to be challenged in these proceedings under Article 226.

7. Counsel for the Petitioner has submitted that Government by its communication dated 24th July, 2001 had indicated the basis for the renewal of the lease and that basis was the Government Resolution dated 5th October, 1999. This was followed by the Collector's

communication of 19th October, 1991 by which the lease was renewed for a further period of 30 years. The Collector made a provisional determination of the lease rent on the basis of the valuation as on 1st August, 1996 with a revised determination with effect from 1st January, 1999 and the Petitioner was called upon to pay a total amount of Rs.62.12 lacs on that basis. The Petitioner was informed that this valuation was provisional and would depend upon the final valuation that was to be fixed by the Assistant Director of Town Planning. The Petitioner has specifically stated through Counsel that it has accepted the decision of the Government contained in the communication dated 19th October, 2001. The decision of the Collector contained in the communication dated 14th March, 2002 was, however, sought to be challenged on two grounds : (i) In so far as the demand of revised lease rent for the period from 1974 to 1995 was concerned, it was submitted that there was absolutely no basis for the Government to make a demand of Rs.60.44 lacs. (ii) For the period from 1995 to 2002, the Government has demanded an amount of Rs.2.86 Crores on the basis of the land value being Rs.30,000/- per

sq. mtr. and the lease rent has been demanded at the rate of 15% of this land value. Counsel submitted that this decision is directly in the teeth of the earlier decision dated 19th October, 2001 and demonstrates a total non application of mind. Relying on various decisions of the Supreme Court and of this Court, to which a reference would be made shortly, it was urged that the decision is arbitrary and violative of Article 14 of the Constitution.

8. In dealing with these submissions, it would at the outset be necessary to note that under the original communication of Government dated 16th May, 1964, the land was leased out to the Petitioner for a period of seven years at 5% of the full market value. The purpose of the lease is to establish and operate a petrol pump. Thereafter on 25th October, 1968 there was a further renewal of the lease for a period of 30 years from 1st June, 1967, subject to the condition that the lease rent would be liable to be revised upon the expiry of each term of seven years. The term of the lease expired on 31st July, 1996. During the term of the lease, a portion of the land was

acquired for the purposes of road widening and Government has upon due measurement found that the total land which has remained in the possession of the Petitioner is 892.6 sq. mtrs. On these facts, there is no dispute. On 24th July, 2001 the Collector informed the Petitioner of the terms on which a renewal of the lease was contemplated and the basis that was indicated in the letter was the Government Resolution dated 5th October, 1999. Under the terms of the Resolution the lease rent that was to be fixed for the renewed term of the lease would initially be determined from the date of the expiry of the lease until 31st December, 1998 and the lease rent would be charged at the rate of 2.5% of the market value as on the date on which the lease expired. Thereafter, on and from 1st January, 1999 the lease would stand renewed for a period of 30 years, the lease rent being fixed on the basis of 2.5% of the market value as on 1st January, 1999. The Petitioner accepted this basis and accordingly, on 19th October, 2001 the Collector renewed the lease for a period of 30 years. The Collector by his communication made a provisional determination of the land value as on 1st August, 1996 (at Rs.24,900/-

per sq. mtr.) and on 1st January, 1999 (at Rs.43,000/- per sq. mtr.) A demand was accordingly made upon the Petitioner at 2.5% of these land values. The Petitioner was informed that the lease rent would be subject to a 10% enhancement upon the expiry of every term of 10 years. The land rates which were fixed by the Collector were evidently provisional since the Petitioner was specifically informed that the report of the Assistant Director of Town Planning on the valuation of the land was still awaited.

9. On 14th March, 2002, the Collector in his communication purported to demand two sets of amounts from the Petitioner; the first was in respect of the amount which was claimed on account of the revision of the lease rents on 1st July, 1974, 1st July, 1981, 1st July, 1988 and 1st July, 1995. Strictly speaking, under the terms of the renewal dated 25th October, 1968 the lease in favour of the Petitioner was renewed for a period of 30 years commencing from 1st June, 1967, subject to the condition that there would be a revision of rent after each term of seven years. The Collector has, therefore, in terms

of this stipulation purported to revise the lease rent that was payable with effect from 1st July, 1974, 1st July, 1981, 1st July, 1988 and 1st July, 1995 respectively. A total demand of Rs.60,44,227/- has been made. The land value has been revised at Rs.300/- per. sq. mtr. with effect from 1st July, 1974, Rs.2,500/- per sq. mtr with effect from 1st July, 1981 and Rs.9,000/- per sq. mtr. with effect from 1st July, 1988. The lease rent is sought to be recovered at the rate of 6.5% for the period 1974 to 1981, 8% from 1981 to 1988 and 8% from 1988 to 1995. Of this amount of Rs.60,44,227/- the Petitioner has according to the Collector paid an amount of Rs.43,07,201/-. The second part of the demand which is really the bone of contention is for the period July 1995 to June 2002. For this period, the Collector has intimated a land value of Rs.30,000/- per. sq. mtr. and has demanded lease rent at the rate of 15% on the basis of the aforesaid land value at the rate of Rs.40.86 lacs per annum. The total demand for the period 1995 to 2002 is thus to the extent of Rs.2.86 Crores.

10. There is merit in the contention of Counsel appearing for the

Petitioner that the demand of Rs.2.86 Crores for the period 1995-2002 is ex facie arbitrary and erroneous. The lease expired on 31st July, 1996 and the question of renewal, therefore arises with effect from 1st August, 1996. In terms of the Government Resolution dated 5th October, 1999, the Collector in his communication dated 19th October, 2001 had spelt out two periods for the revision of lease rent, the first commencing from 1st August, 1996 and the second from 1st January, 1999. The lease was renewed for a period of 30 years with effect from 1st January, 1999. The communication of the Collector dated 14th March, 2002 seeks to demand an amount of Rs.2.86 Crores for the period 1995 to 2002. This proceeds on an erroneous basis that the term of the renewal is seven years, the period of seven years being with reference to the renewal dated 25th October, 1968. The term of the renewed lease under the communication dated 25th October, 1968 had expired on 31st July, 1996 and therefore, the demand for a period of seven years is clearly in error. What the Collector was required to do was to implement his own communication dated 19th October, 2001 by making a final

determination of the land value as on 1st August, 1996 and 1st January, 1999. The Collector in his communication of 19th October, 2001 had in fact fixed an amount of Rs.43,000/- per sq. mtr. with effect from 1st January, 1999 on a provisional basis. The impugned demand dated 14th March, 2002 inexplicably fixes the land rate at the rate of Rs.30,000/- per sq. mtr. for the period 1995-2002. What is objectionable about that determination is the demand at the rate of 15% of the aforesaid land value whereas in the communication of 19th October, 2001 (which was based on the Government Resolution dated 5th October, 1999) the Government had agreed to demand the lease rent at the rate of 2.5% of the land value that would be determined by the Assistant Director of Town Planning. The lease had been renewed, the basis of renewal had been crystallized and the Government was to compute finally the actual lease rentals on the Additional Director of Town Planning determining the land value as on 1st August, 1996 and 1st January, 1999. Thus, considered from any perspective, the impugned demand that has been raised by the Collector, Mumbai Suburban District is unsustainable.

11. In a matter such as the present, the governing principles of law are well settled. The State Government is exempt from the provisions of rent control law on the premise that it would neither profiteer nor be governed by considerations which a private landlord would be guided. Indeed, rent control legislation regulates the charging of rent even by a private landlord and the exemption that has been granted to the Government is premised on the foundation that the Government would act fairly and reasonably and would not seek to evict tenants guided by the motive of profiteering from its properties. The line of authority on this principle commences with the lucid exposition of law by Chief Justice M.C. Chagla in Ram Pratap Jaidayal v. Dominion of India (1952) 54 BLR 927. The Supreme Court has enunciated the binding precepts to govern such cases in Baburao Shantaram More v. Bombay Housing Board (1954 SCR 572), P.J. Irani v. State of Madras (AIR 1961 SC 1731), Dwarkadas Marfatia and Sons v. Board of Trustees for the Port of Bombay, (AIR 1989 SC 1642) and in Srilekha v. State of UP [(1991) 1 SCC 212].

12. In Ratti Palonji Kapadia v. State of Maharashtra (1992 Mh.L.J 1356). where Mrs. Sujata Manohar, J. (as the Learned Judge then was) spoke for a Division Bench of this Court the case involved renewals of existing leases. On many of the parcels of land, existing lessees had carried out development of the lands under lease. The lands, the Division Bench held, could not therefore be evaluated as open and undeveloped plots of land. The Division Bench held that the underlying policy of the Rent Act is that a private landlord is entitled to a reasonable return on his investment, and was not entitled to profiteer from the escalation of land values based on market prices. The State Government which is exempted from the Rent Act cannot utilize its exemption to profiteer and must comply with the public policy of ensuring basically, a fair return on investment on land without charging exorbitant rates based on prevailing market prices.

13. The decision of the Division Bench was considered in a

subsequent decision of the Supreme Court in Jamshed Hormusji Wadia v. Board of Trustees, Port of Mumbai (2004(1) SCALE 341). The Learned Chief Justice of India Mr. Justice R.C. Lahoti while recapitulating the principles which emerged from the decided cases held that the State as landlord need not necessarily act as a charitable Samaritan in every case, since the State may in itself perceive a need for expanding or stimulating its own activities. However, the State cannot be seen to be indulging in rack-renting, profiteering and indulging in whimsical or unreasonable evictions or bargains. A balance, ruled the Supreme Court, would have to be struck between two extremes :

> "19. A balance has to be struck between the two extremes. Having been exempted from the operation of rent control legislation the courts cannot hold them tied to the same shackles from which the State and its instrumentalities has been freed by the legislature in their wisdom and thereby requiring them to be ruled indirectly or by analogy by the same law from which they are exempt. Otherwise, it would tantamount to defeating the exemption clause consciously enacted by the Legislature. At the same time the liberty given to the State and its instrumentalities by the statute enacted under the Constitution does not exempt them from honouring the

> Constitution itself. They continue to be ruled by Article 14. The validity of their actions in the field of landlord-tenant relationship is available to be tested not under the rent control legislation but under the Constitution. The rent control legislations are temporary, if not seasonal, the Constitution is permanent and all time law."

These principles have been recently followed by a Division Bench of this Court in its decision in Persis Kothavalle v. Life Insurance Corporation of India (Writ Petition 2436 of 2003 – decided on 7th April, 2004 by a Division Bench consisting of Justice S. Radhakrishnan and Justice V.M. Kanade).

14. The communication of the Respondent State dated 14th March, 2002, is in my view plainly inconsistent with the law which has been laid down by the Supreme Court. Having renewed the lease for a period of thirty years by his communication dated 19th October, 2001, the Collector had set out the basis for computation of the lease rent. The Petitioner acted on that communication and deposited 50% of the demand. The payment of the balance was to be made upon a determination of the exact area which remained with the Petitioner

after the extent of the land that was acquired for the purposes of road widening was fixed. The communication dated 14th March, 2002 suffers from an evident non-application of mind. First and foremost the communication is completely silent in regard to the basis on which a demand of 15% of the land value was made when in the previous communication of the Collector the lease rent was fixed at the rate of 2.5% of the market value. The only thing which remained to be done after the previous communication of 19th October, 2001 was the final determination of the land value by the Assistant Director of Town Planning. In the affidavit in reply that has been filed by the Government in these proceedings, there is a clear admission that by the order dated 19th October, 2001, the lease has been renewed for a period of 30 years or until the date on which the Government/ Municipal Corporation requires the land. There is similarly a categoric averment that the lease rent has to be calculated at 2.5% of the market value of the land as on 1st January, 1999. The affidavit of the Government purports to state that the valuation of the land as in 1974, 1981, 1988 and 1995 has been received from the Assistant Director

of Town Planning by his letter dated 6th November, 2001. It is then averred that the determination dated 14th March, 2002 has been arrived at in pursuance of the aforesaid valuation. This is evidently unfounded and incorrect since the determination that was required to be made was in terms of the communication dated 19th October, 2001 where the Assistant Director of Town Planning was required to determine the valuation as on 1st August, 1996 and 1st January, 1999, though it was on the basis of that determination that the lease rent would have to be determined at the rate of 2.5% per annum. Government has acted arbitrarily, contrary to its own recorded decision and totally unmindful of the consideration that a long lease subsisting since 1962 for providing an amenity to the public was being renewed. Such a decision cannot pass muster.

15. In the circumstances, the appropriate order to pass in these proceedings would be to quash and set aside the impugned determination dated 14th March, 2002 and to remand the matter back to the Collector for a fresh determination. The Collector shall arrive at

a fresh determination of the lease rent after a notice to the Petitioner and an opportunity of being heard. The Collector is directed to do so within a period of three months from today. In the meantime, until a fresh determination is made by the Collector, the Petitioner shall continue to pay the lease rent in terms of the order dated 19th October, 2001 and all payments thus made will be subject to final adjustment on a determination being made by the Collector.

The Writ Petition is accordingly disposed of.

There shall be no order as to costs.